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which it is held, yet it may exercise over it a large measure of control. See *Terret* v. *Taylor*, 9 Cranch (U. S. Sup. Ct.) 43, at 52. It would follow that no right of the inhabitants was violated in the principal case, by changing the form of the obligation, without altering its value or purpose. The statute was apparently analogous to a law changing the investment of trust funds. It would seem, therefore, that whether this right of the city be viewed as a wrongful product of a limited municipal power, or as a valid and lawful contractual right, the change which was made should not be regarded as unconstitutional.

STATUS OF CUBA UNDER THE AMERICAN MILITARY GOVERNMENT. — A recent case deals with the question whether Cuba, when under our military government, was a "foreign country," not merely within the meaning of particular statutes, but in the full sense of the term. A murder was committed on the high seas on a ship registered at Havana under the American provisional government. The United States Circuit Court, before which the murderer was brought, held that it had no jurisdiction since the ship was "an extension of a foreign country." *United States* v. *Assia*, 28 N. Y. L. J. 433 (Circ. Ct., E. D. N. Y.).[1] The decision would seem to be clearly correct, and goes little beyond a holding of the Supreme Court that an act of Congress providing for extradition to "foreign countries" applied to Cuba. *Neely* v. *Henkel*, 180 U. S. 109.

These cases bring out strongly the American doctrine as to the effect of military occupation by the United States upon the status of the country occupied. The actual sovereignty of the United States over Cuba was complete; Spain had by treaty renounced all her rights, and there was scarcely a trace of a native Cuban government. The provisional government established by the President was complete in organization, and prepared for an indefinite existence. The old international doctrine would not have considered territory so held as "foreign," and subsequent modifications of that doctrine have not been fully accepted. See HALL, INTERNAT. LAW, 4th ed. 481. The peculiar character of our government, however, clearly necessitates the adoption of a different rule. International law requires assent by the incorporating state before incorporation is deemed complete, but allows each country to determine who shall have authority to represent it in giving such assent. In England this power is exercised by the Crown. Conquest and military occupation imply valid assent and make conquered territory part of the empire. *Campbell* v. *Hall*, 1 Cowper 204; see TAYLOR, INTERNAT. LAW 600; but also HALL, *supra*. In the United States, however, the power of assent is vested by the Constitution in the President and Congress. The President can exercise complete authority over territory under his military control. *New Orleans* v. *Steamship Co.*, 20 Wall (U. S. Sup. Ct.) 387. But he cannot without the co-operation of Congress incorporate such territory into the Union. *Fleming* v. *Page*, 9 How. (U. S. Sup. Ct.) 603; *Cross* v. *Harrison*, 16 ibid. 164. Under this strict division of powers the United States may well have full actual sovereignty over territory which remains foreign. It is true that such control imposes on the United States the usual responsibilities of the sovereign to other nations. The importance,

[1] When the case appears in the regular reports it will be noted among Recent Cases in a subsequent issue.

nevertheless, of this distinction between territory under the control of the President and territory incorporated into the Union is manifestly far-reaching in other directions. The question of the insular cases as to the status of the islands expressly ceded to the United States by Spain under a treaty ratified by the Senate, is to be distinguished from that of the principal case.

Taxation of Costs against Prosecuting Witness. — It is provided by statute in many states that, where certain criminal proceedings, instituted by the filing of a complaint, result in the acquittal of the accused, the good faith of the complainant may be determined in the finding; and if it be found that the prosecution was malicious or without reasonable cause, the magistrate shall enter judgment against the complainant for costs. In general, the constitutionality of such enactments has been admitted without dispute, and, when made the subject of decision, it has been supported, but on reasoning which is far from satisfactory. It is said that the effect of the statutes is to declare that an unwarranted appeal to the criminal law is itself a violation of the law, and that the prosecuting witness is on that account subject to the penalty of paying the costs of the proceedings. *In re Ebenhack*, 17 Kan. 618; *State* v. *Cannady*, 78 N. C. 539. But if this be the true view, it would seem that the complainant is deprived of his property without due process of law. He is not a party to the suit; he may be denied the right to be represented by counsel, and if permitted to introduce evidence at all, the most important evidence on the question as to whether he acted with reasonable cause, may be fatally objectionable in a trial, where the guilt of the accused is the principal issue. However, when the complaining witness is allowed an appeal, on which his justification for instituting the proceedings is the sole issue, these objections disappear. *State* v. *Smith*, 65 Wis. 93. A recent decision in Nebraska, where, as is common, an appeal is not allowed, points out the difficulties with the view adopted by courts supporting the statutes, and holds a similar statute unconstitutional. *Rickley* v. *State*, 91 N. W. Rep. 867.

It seems, nevertheless, that the validity of such enactments may be upheld on other grounds. There is no constitutional guaranty to an individual of a right to institute criminal proceedings. This, however, is not to be understood as a denial of the right of an individual to compel the state, through its officers, to institute a prosecution. When, therefore, the legislature permits prosecutions by complaint, it is within its prerogative to impose such conditions as it may see fit on the exercise of the right which it grants. On this view the statutes in question would not be unconstitutional even if they made the mere acquittal of the accused sufficient ground for the taxation of costs; and the specification that the proceedings must be found to have been unwarranted is but a further limitation which, for reasons of policy, the legislature has put upon the exercise of its full prerogative. The means, therefore, for the determination of the question whether the complainant acted reasonably and without malice can be specified as the legislature chooses; and the complainant cannot object that he is deprived of property without due process of law, when the costs are taxed on the finding in a suit to which he is not a real party.

An examination of the grounds on which costs are taxed against an unsuccessful party to a civil suit is instructive in this connection. Reasonable conditions may be attached to the exercise of the right to invoke